

No. 17385 ✓

United States
Court of Appeals
for the Ninth Circuit

TECHNICAL PUBLICATIONS INSTITUTE, and
the owners and operators thereof, and FRANK
CSASZAR, its manager,

Appellant,

vs.

STANLEY MOSK, Attorney General of the State of
California,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

SEP 8 1961

FRANK H. SCHMID, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate by the Clerk.....	30
Minutes of the Court.....	22
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	27
Notice of Entry of Order Denying Request for Temporary Restraining Order, Clerk's.....	26
Order Extending Time for Preparing Record on Appeal From the Order Denying the Temporary Injunction	29
Petition for Statutory Three-Judge Court for Injunction Against the Enforcement of State Statutes of the State of California, Etc.....	3
Praeipce	28
Statement of Points Upon Which Appellant Intends to Reply on Appeal (U.S.C.A.).....	32

NAMES AND ADDRESSES OF ATTORNEYS

For Appellants

MORRIS LAVINE

215 West Seventh Street
Los Angeles 14, California

For Appellees

STANLEY MOSK

Attorney General

JOAN D. GROSS

Deputy Attorney General

NORMAN L. EPSTEIN

Deputy Attorney General

600 State Building
Los Angeles 12, California

In the United States District Court
Southern District of California
Central Division

No. 1381-60-Y

TECHNICAL PUBLICATIONS INSTITUTE and
the OWNERS AND OPERATORS THERE-
OF, and FRANK CSASZAR, ITS MANAGER,
Plaintiffs,

vs.

STANLEY MOSK, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA, and THE
STATE OF CALIFORNIA,
Defendants.

PETITION FOR STATUTORY THREE-JUDGE
COURT, FOR INJUNCTION AGAINST THE
ENFORCEMENT OF STATE STATUTES
OF THE STATE OF CALIFORNIA ON THE
GROUNDS THAT THEY CONFLICT WITH
THE CONSTITUTION OF THE UNITED
STATES AND STAY OF STATE COURT
PROCEEDINGS

Jurisdiction

Jurisdiction is conferred under Sections 2281, 2283
and 2284 of Title 28, United States Code and Title
28, Section 2201 United States Code.

This action involves the constitutionality of Sections
29001 to 29020 of the Education Code of the State of

California and Sections 11183 to 11188 of the Government Code of the State of California, inherently and as construed and applied in this case, as being in conflict with the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and Article One, Section 10 of the Constitution of the United States, and whether the plaintiffs are denied due process and equal protection of the laws, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The case also involves an actual controversy between the plaintiffs and the Attorney General of the State of California as to the plaintiffs' rights and duties as construed in the light of the Constitution of the United States in its First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

It also involves a legal controversy between the plaintiffs and defendants as to whether Section 29001 of the Education Code, inherently and as construed and applied in this case, is too vague and indefinite and uncertain as to constitute a basis for criminal punishment.

It also involves the issue of whether the plaintiffs, who operate an extensive publication and writing business in the State of California by mail throughout the world and publish and distribute educational courses of instruction regarding technical writing, are denied the equal protection of the laws as regards schools in other states, engaged in similar instruction, in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction is also asserted to declare the rights and duties of the state to limit and censor and control and supervise education through the oblique method of calling for information regarding diplomas in subpoenas duces tecum.

The State of California in its Superior Court has upheld the power of the Attorney General to conduct investigations and to compel petitioners to respond to subpoenas duces tecum and the District Court of Appeal and the Supreme Court have declined to issue their appropriate Writs of Prohibition and Mandate, or any other appropriate Writs; the Honorable B. Rey Schauer voting for a hearing. Thus the highest court of the state has upheld the constitutionality of the statutes and the procedure and proceedings involved.

Plaintiffs assert damage and injury in excess of \$10,000 by reason of the attempted investigation and publicity resulting therefrom. They further assert that the names and addresses of their students and graduates are trade secrets worth at least a quarter of a million dollars and that compelling them to give them up would cause losses in excess of \$10,000 to competitors and others.

First Count and Claim

Jurisdiction is conferred under Sections 2281, 2283 and 2284 of Title 28, U. S. Code, which confers upon a United States Court consisting of a statutory three-judge court, jurisdiction to enjoin the enforcement of an unconstitutional statute of a state on the grounds of its being in conflict with the Constitution of the United States.

1. Damages and loss in excess of \$10,000 by reason of the state's attempted enforcement of the unconstitutional statute of the State of California have occurred and continuing damage in excess of \$10,000 is occurring by reason of the action of the Attorney General of the State of California.

2. Technical Publications Institute and the owners and operators thereof publish and circulate privately, and for compensation, a series of courses of instruction in the range of technical materials in such subjects as airplanes, relating to the technical and mechanical engineering and devices thereof and to engineering and technical matters of a like nature. It is a private school with its main offices and facilities located at 6399 Wilshire Boulevard in the City of Los Angeles, County of Los Angeles, State of California, and within the jurisdiction of the District Court of the United States, Southern District of California, Central Division. Its operations and the giving of its courses extend nationwide and even throughout other parts of the world.

Its staff consists of 8 and sometimes 9 teachers or instructors, who examine lessons and writing material of students who take its courses.

It publishes and disseminates 3 different types of lessons or instructions. One of these courses consists of 40 lessons in general technical writing materials. It is useful in the various technical crafts, particularly airplanes, missiles, electronics and other scientific materials. It has another course consisting of 56 lessons concerning the writing of materials for engineering and in the field of engineering and it has a third

course, consisting of 40 lessons, in drafting for technical or scientific purposes.

The Institute was founded in 1954 to supply technical writing knowledge widely needed in the professional field to which it seeks to implant this knowledge and its subjects are not rightly taught in public schools. It has no relation or connection with any public school. It is not necessary for those who enroll in Technical Publications Institute courses or buy its publications to have high school credit or a high school diploma, or its equivalent, before taking up the courses of instruction or purchasing the series of courses. Before the course is given to students they are given an aptitude test by the private school itself, which accepts or rejects the application upon the outcome of the private examination.

A contract is entered into usually with the person purchasing the publications and enrolling in the school. A fee is involved in the giving of the particular instructions and the purchase of the publication material. These contracts are generally installment contracts although students may purchase and pay for the course outright if he or she so wishes.

The school has widely advertised its courses and has branches in various and numerous other cities and states of the United States. It has thereby enrolled students. The student list and their names and addresses are a very valuable asset not only to the school but could be, in time of national emergency, a great asset to the Department of Defense. The lists are considered the private property of Technical Publica-

tions Institute and are estimated to have a value of more than a quarter of a million dollars.

The school has an enrollment of more than 2500 students outside the state and has an enrollment of approximately 2445 students, more or less, within the state. The approximate appraisal of the valuation of the school as of May 1960 was \$1,290,000.

Because of the attempted investigation of the Attorney General, the proceedings herein sought to be enjoined, the valuation of the school is less than \$1,000,000 and unless an injunction is issued the Institute may be entirely and totally destroyed.

The school has rival institutions engaged in the same line of endeavor, of which there are approximately 5 in the Judicial District of the Southern District of California, Central Division. There are other institutions throughout the United States engaged in similar instructions. The availability of student lists to other institutions would cause great and irreparable damage and injury and would make available to persons not authorized to have them people who are qualified in the technical knowledge and skill in the subjects taught.

3. The publication material of Technical Publications Institute is in no way in violation of any law, obscene or otherwise objectionable from this standpoint and standards of technical knowledge and publication.

The Institute does not require a high school credit or high school diploma or its equivalent nor does it seek any benefits from any state or public institution, schools or colleges of the State of California.

The students who complete the courses are entitled to a certificate stating that they have satisfactorily completed the courses taken. They do not purport or seek to entitle the holder to any college or high school credit, nor is it claimed or asserted that such certificate entitles them to any such college or high school credit nor that it is comparable or equal to any high school or college course involving any subject which may be the same or similar, if there is any such high school or college courses, or that there is any such high school or college course or courses of the same or similar subjects.

On May 11, 1960 the Attorney General of the State of California, by a Deputy Attorney General, Norman Epstein, caused to be served upon Technical Publications Institute and Frank Csaszar, its manager, a subpoena duces tecum ad testandum purporting to come from the Department of Justice, Office of the Attorney General, to appear May 12, 1960 at 3:30 p.m. and bring with him the following described books, written records, documents and other material:

“Authority to Conduct Investigations and to Hold Hearings in Connection Therewith.

“State of California Department of Justice

“Office of the Attorney General

“Pursuant to provisions of Section 11182 of the Government Code of the State of California, I hereby authorize Elizabeth Miller and Norman L. Epstein of the Department of Justice of the State of California, to conduct an investigation into the Technical Publications Institute, its activities, owners and operators, in

order to determine whether said institute or the owners and operators thereof, have issued or conferred any diploma or honorary diploma in violation of Article 1, Chapter 8, Division 20, Part 4 of the Education Code composing Sections 29001 to 29022, inclusive thereof.

“Dated: This 21st day of March, 1960.

“STANLEY MOSK,
“Attorney General of the
State of California.”

“Subpoena Duces Tecum Ad Testandum

“State of California Department of Justice
Office of the Attorney General

“In the Matter of the Investigation of Technical Publications Institute, and the Owners and Operators thereof.

“The People of the State of California Send Greetings to:

“Barnarr R. Cannon, Marie T. Cannon, Frank Csaszar, Patrick S. Mitton, Technical Publications Institute, Technical Publications Institute, Inc., a corporation, Technical Publications Investment Corporation, a corporation, and B. R. Cannon, Inc., a corporation.

“Pursuant to the authority vested in me by the laws of the State of California:

“You are hereby commanded to appear before the Attorney General of the State of California, or his duly authorized representative, at 217 W. First Street, Room 4020, Los Angeles, California, on the 11th day of May, 1960, at the hour of 11:00 o'clock a.m., and to continue in attendance before him at such times and

places as he may determine and to testify in the above entitled matter.

“You are further commanded to bring with you and produce the following described books, written records, documents and other material :

“The names and addresses, both local and home, including city and street, of each of the students of Technical Publications Institute, Technical Publications Institute, Inc., Technical Publications Investment Corporation, and B. R. Cannon, Inc., who have been students at any time from and after July 23, 1958, to and including the present :

“The number of diplomas and honorary diplomas granted by Technical Publications Institute, Technical Publications Institute, Inc., Technical Publications Investment Corporation, and B. R. Cannon, Inc., together with the names and addresses of the persons to whom each was granted and the date upon which each was granted, and the curricula upon which each diploma was based; the courses of study offered by Technical Publications Institute, Technical Publications Institute, Inc., Technical Publications Investment Corporation, and B. R. Cannon, Inc., at any time from on or after July 23, 1958 to and including the present.

“The names and addresses, including city and street, of every person who has instructed for or at Technical Publications Institute, Technical Publications Institute, Inc., Technical Publications Investment Corporation, and B. R. Cannon, Inc., from on or after July 23, 1958 to the present, together with the record of the educational qualification of each.

“For failure to comply with the provisions of this subpoena and to attend as required you will be subject to contempt proceedings in accordance with the provisions of Section 11188 of the Government Code of the State of California.

“Given under my hand this 19th day of May, 1960.

“STANLEY MOSK,

Attorney General

“/s/ By NORMAN L. EPSTEIN,

Deputy Attorney General”

To this purported subpoena duces tecum of the Attorney General, Frank Csaszar, as manager of Technical Publications Institute, responded with a motion to quash the same upon the grounds, among others, that Sections 29001-29022 inherently and as construed and applied in this case violate due process clauses of the Fourteenth Amendment to the Constitution of the United States; that its construction and application in this case is unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States.

The Attorney General caused to be filed in the Superior Court of the State of California a petition to that Court to enforce the subpoena duces tecum to compel the school to produce the data set forth in the subpoena of the Attorney General.

The Superior Court of the State of California, in and for the County of Los Angeles, issued its order to Frank Csaszar and Technical Publications Institute on September 20, 1960 ordering the said Institute to appear on October 13, 1960 at 3:30 p.m. with the docu-

ments and records set forth in the subpoena duces tecum of the Attorney General.

A petition for a Writ of Prohibition was thereafter filed in the District Court of Appeal of the State of California to prohibit and prevent the enforcement of the subpoena duces tecum on the grounds that the statutes, Sections 29001-29020 of the Education Code inherently and as construed and applied violate the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

The District Court of Appeal of the State of California thereafter denied, without an opinion, its Writ of Prohibition and Mandate and any other appropriate Writ and a petition was filed from the order of denial to the Supreme Court of the State of California. The Court likewise, on December 7, 1960, denied a hearing from the petition for a Writ of Prohibition and Mandate and any other appropriate Writ, challenging the constitutionality of the Education Code inherently and as construed and applied in this case and the power and authority of the Attorney General of the State of California under the Government Code of the State of California, Sections 11183-11188 inherently and as construed and applied in this case, as being in violation of the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. Thus the State of California has passed upon the issues involved and upheld the constitutionality thereof, the Honorable B. Rey Schauer, Justice of the Supreme Court of the State of California, voting for a hearing.

On November 18, 1960 the Honorable Ellsworth Meyer, Judge of the Superior Court, found plaintiffs

in contempt of Court and fined Technical Publications Institute and Frank Csaszar \$200 or, as an alternative, 5 days in jail, and stayed the execution of the judgment to November 30 and thereafter, on his own motion, stayed the judgment to and including December 10, 1960. Plaintiffs have therefore submitted their questions of constitutionality of the statutes involved under the state law of the State of California to the highest Court of the state and the challenge as being in violation of the constitution of the United States has been denied and the constitutionality of the California statutes involved has been implicitly upheld as not being in violation of the First and Fourteenth Amendments to the Constitution of the United States.

Plaintiffs claim that:

I

The statutes (Sections 29001-29020, Education Code) under which the investigation and subpoena are attempted to be issued, inherently and as construed and applied in this case, would interfere with private business and property owners' rights and the right of the school to make contracts without interference from the state and without subjecting itself to state inspection and the right to carry on business with freedom from interference and investigation and disclosure of its private student lists, a valuable business asset. The interference, furthermore, is a violation of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

A. The Attorney General has no authority to compel a search or seizure by means of a subpoena duces tecum or to compel persons to furnish evidence which may make them guilty of a crime.

II

The statutes (Sections 29001-29020 of the Education Code) inherently and as construed and applied in this case by the Superior Court, constitute an unlawful invasion of freedom of the press and of publication, in violation of Article I, Section 9 of the Constitution of the State of California and the First and Fourteenth Amendments to the Constitution of the United States. They constitute an attempt to censor education and educational material.

III

Sections 29001 to 29020 of the Education Code, inherently and as construed and applied in this case, are violative of Article I, Sections 1 and 9 of the Constitution of California and of the due process clause of Article I, Section 13 of the Constitution of California and of the due process and equal protections clauses of the Fourteenth Amendment of the Constitution of the United States, and interfere with the private right of contract under the provisions of Article I, Section 10 of the United States Constitution and constitute the taking of private property and interference with private rights in violation of Article I, Section 1 of the Constitution of California, Article I, Section 13 of the Constitution of California and the Fourteenth Amendment to the Constitution of the United States.

IV

Section 29001 of the Education Code, inherently and as construed and applied in this case, is too vague, uncertain and indefinite to constitute a standard, the violation of which can constitute a crime and therefore violates due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

V

The attempted securing of a subpoena duces tecum for the purpose of investigating acts which may constitute a crime is in violation of Article I, Sections 13 and 19 of the Constitution of California and the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. It is an exploratory search for evidence of a crime and, in effect, compels self-incrimination.

VI

The Statutes, Sections 29001 to 29020, deny the equal protection of law to private schools and the classifications therein contained are unreasonable, arbitrary and capricious and in violation of the equal protection clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States. Also, private schools outside the state are not treated equally.

VII

Sections 29001-29020, inherently and as construed in this case insofar as they would impair the obligation of contract to teach privately and give letters or certificates of completion, violate Article I, Section 10,

United States Constitution in that they impair the obligation of contract.

VIII

Section 29011, Education Code, and Section 11188, Government Code, inherently and as construed in this case, violate Article I, Section 19 and Article I, Section 13 of the Constitution of California and authorize an unreasonable search and seizure in violation of Article I, Section 19, Constitution of California, and the Fourteenth Amendment to the Constitution of the United States.

IX

The affidavit in support of the alleged subpoena duces tecum is on information and belief and fails to set out facts giving any jurisdiction to the Attorney General or his Deputies or to the Superior Court.

X

There was no showing of any affidavit by the Department of Public Education of the State that it has requested the Attorney General to make such an investigation or that there has been any violation of its rules and regulations, or that the Technical Publications Institute comes within the jurisdiction of the said Department of Public Education.

XI

The attempt to control private education by means of controlling a facet of it through a statute regarding diplomas violates the basic concept of American Liberty. It is a matter of historical knowledge that Hit-

ler stated he was able to get control of Germany by getting control of its schools. There is no reasonable relationship between an investigation regarding diplomas as defined in Section 29001 of the Education Code and the purposes of the legislature in preventing the issuance of diplomas in matters relating to the public schools. Section 29001 of the Education Code does not, in any event, encompass schools except those teaching beyond high school level.

XII

The provisions of the Education Code which restrict private education except in institutions having property of a certain value is unconstitutional in that it is arbitrary and capricious and in violation of due process of law, as defined by Article I, Section 13 of the Constitution of California and the Fourteenth Amendment to the Constitution of the United States.

XIII

Sections 29001 to 29020 are violative of Article I, Section 13 of the Constitution of California and the Fourteenth Amendment to the Constitution of the United States inherently and as construed and applied in this case, are unreasonable, arbitrary and capricious and have no reasonable relationship to the objects sought to be obtained. There is no reasonable relationship between the attempt to investigate the list of students and graduates of this private school dealing

in non-public education matters and the objects sought to be obtained by the legislature.

XIV

There is no proper foundation for any production of any books and records since there was no oath or affidavit as required by Article I, Section 19 of the Constitution of California sufficient to lay a foundation for the production of any books and records of a private school teaching private subjects. The subpoena duces tecum therefore was violative of due process of law guaranteed by Article I, Section 1 of the Constitution of California and the Fourteenth Amendment to the Constitution of the United States.

XV

Sections 29001 and 29020 of Sections 11183-11188 of the Government Code inherently, and as construed and applied by this case, violate Article I, Section 19 and Article I, Section 13 of the Constitution of California and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Plaintiff Frank Csaszar is the manager and operator of Technical Publications Institute.

Plaintiffs herein allege that Sections 29001-29020 of the Education Code inherently and as construed and applied in this case violate the First and Four-

teenth Amendments to the Constitution of the United States.

Technical Publications Institute has suffered great and irreparable harm and damage by reason of the publication of the purported investigation of the Attorney General. The reports thereof have been carried in newspapers and trade publications and have interfered with the credit and other operations of Technical Publications Institute, causing damage to the said Institute in a sum in excess of \$10,000. It also interfered with the handling of the contracts of Technical Publications Institute with its students, some of whom have refused to carry out their contracts because of the reported investigation and thus have required the Institute to file lawsuits and carry on measures to have its contracts observed. It has also caused irreparable damage in the factoring of its contracts, in excess of \$10,000.

Unless the Attorney General and the State of California are restrained from further activity and action in this matter, great and irreparable damage will be done to this educational institution and it may even compel it to go out of business in California.

Its lists of private students and persons who have taken its educational courses and might be qualified for positions in which this institution could furnish the necessary students is a highly valuable asset and is private property and should not be forced to give it up

to the state without compensation on a claimed investigation under a power of subpoena duces tecum. Plaintiffs challenge the constitutionality of each of the sections of the Education Code herein set out which challenges have been presented to the Courts of the State of California and have been passed upon by the Superior, Appellate and Supreme Courts of the State of California.

Wherefore, plaintiffs pray that this Honorable Court issue its temporary and permanent injunctions and issue a temporary stay until a three-judge court can pass upon the constitutionality of the statutes and proceedings in this case inherently and as construed and applied in this case.

/s/ MORRIS LAVINE
Attorney for Plaintiffs

Duly Verified.

[Endorsed]: Filed Dec. 12, 1960.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 12, 1960. At: Los Angeles,
California.

Present: Hon. Leon R. Yankwich, District Judge.

Proceedings: The request for a temporary restraining order and for the convening of a three-judge statutory court to hear the petition of the Plaintiff for injunction against the Attorney General of California's enforcement of Sections 29001 to 29020 of the Education Code of the State of California and Sections 11183 to 11188 of the Government Code of California is hereby denied.

The Court is of the view that the petition in this case does not show on its face the presence of a substantial federal question required to invoke its jurisdiction either under Sections 2281, 2283 or 2284 of Title 18 of the United States Code or Section 2201 of Title 18.

The statute relating to the power of three-judge statutory courts to stay enforcement by injunctive process of an unconstitutional federal statute require that the complaint state on its face the existence of a substantial federal question. When it does not do so the single judge to whom the petition is addressed may, subject to the right to review, rule upon the matter and decline to grant relief or convene a three-judge court. (Ex parte Poresky, 1933, 290 U. S. 30, 31-32;

Oklahoma Gas Co. v. Packing Co., 1934, 292 U. S. 386, 390-392; Water Service Co. v. Redding, 1938, 304 U. S. 252, 255-256; Eastern States Petroleum Corp. v. Rogers, 1959, 265 F. 2d 593; (per Prettyman, Chief Judge, U. S. App. D. C.) Carrigan v. Sunland-Tujunga Telephone Co. 1959, 263 F. 2d 568, 571-573. And see the writer's opinion in Wylie v. State Board of Equalization, D. C. Cal., 1937, 21 F. Supp. 606.)

The allegations of the complaint do not show the plaintiff to be within the scope of the rulings in *Talley v. California*, 1960, 362 U. S. 60, in which the court invalidated an ordinance of the City of Los Angeles forbidding the circulation of any handbills unless some information as to their origin was printed, or in *N. A. A. C. P. v. Alabama*, 1958, 357 U. S. 449, invalidating a statute of the State of Alabama requiring disclosure of membership of outside organizations, or *Bates v. Little Rock*, 1960, 361 U. S. 310, which invalidates a local ordinance which compelled disclosure of local members of organizations.

The proceedings which it is sought to have us enjoin and declare unconstitutional are proceedings under the provisions quoted in the California codes regulating the conditions for issuing diplomas for the purpose of preventing fraud on the public. The investigation involved before the California courts aim to investigate whether there has been violation of any of these provisions.

Private schools have a right to exist, but the State may regulate them provided the regulations are not unreasonable in preventing a right of a person to be educated privately or the right of a parent to educate his child privately. (Meyer v. Nebraska, 1923, 262 U. S. 390; Pierce v. Society of Sisters, 1925, 268 U. S. 510, 532-525; Farrington v. Tokushige, 1927, 273 U. S. 284, 298, 299) Subject to this limitation the State has a right

“to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught.” (Pierce v. Society of Sisters, *supra*, p. 534)

The Sections under which the inquiry is being conducted do not go beyond the power so recognized.

While under the view taken the court would be justified in dismissing the petition as was done in the cases cited and sanctioned by the Court of Appeals for the Ninth Circuit, Carrigan v. Sunland-Tujunga Telephone Co., *supra*, we do not take this action so that counsel may be free to serve the complaint and have the issue which the court has raised *sua sponte* determined upon such adversary pleadings as may be filed by the named defendant.

/s/ LEON R. YANKWICH,
U. S. District Judge.

cc: Morris Lavine, Esq.

215 West 7th St.

Los Angeles 14, California

Hon. Stanley Mosk,
Atty. Genl. State of Calif.

Norman L. Epstein, Esq.

Deputy

600 State Bldg.

Los Angeles 12, Calif.

JOHN A CHILDRESS,
Clerk.

By
Deputy Clerk.

[Endorsed]: Filed Dec. 12, 1960. Entered Dec.
15, 1960.

26 *Technical Publications Institute, etc., et al. vs.*

United States District Court
Southern District of California

Office of the Clerk
Room 231, U. S. Post Office & Court House
Los Angeles-12, California.

Morris Lavine, Esq.
215 West Seventh St.
Los Angeles 14, Calif.

RE: Technical Publications Institute et al, vs. Mosk,
etc., et al, No. 1381-60-Y.

You are hereby notified that Order denying request
for temporary restraining order etc. in each of the
above-entitled cases was entered this day Dec. 15, 1960
in the docket.

I hereby certify that this notice was mailed on Dec.
15, 1960.

CLERK, U. S. DISTRICT COURT,
/s/ By C. A. SIMMONS,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Stanley Mosk, Attorney General of the State of California and the State of California, Defendants:

Notice is hereby given that Technical Publications Institute and Frank Csaszar appeal herewith from the order and judgment of United States District Court Judge Yankwich denying Technical Publications Institute and Frank Csaszar a temporary injunction and denying the calling of a three-judge court for the purpose of hearing the application for a temporary and permanent injunction on the ground that the statutes involved, and each of them, were and are in violation of the Constitution of the United States.

Dated: January 9, 1961.

/s/ MORRIS LAVINE,
Attorney for Plaintiffs

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 9, 1961.

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the United States District Court:

You are requested to prepare forthwith a record on appeal in the foregoing action and to include in the record the Clerk's Transcript, containing the complaint, the order of Judge Yankwich dated December 12, 1960 which is in the minutes of the Court, denying the application for temporary restraining order and for the convening of a three-judge statutory court, the Notice of Entry of the said judgment, the books and records of the Clerk, the Notice of Appeal and this Praecipe.

Dated: January 9, 1961.

/s/ MORRIS LAVINE,
Attorney for Plaintiffs.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 9, 1961.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR PREPARING
RECORD ON APPEAL FROM THE ORDER
DENYING THE TEMPORARY INJUNC-
TION.

Good cause appearing therefor,

It Is Ordered that the time within which the Clerk may complete and file and docket the record on appeal from the Order denying the temporary injunction be, and it is, extended to the 31st day of March, 1961.

Dated: This 24th day of February, 1961.

/s/ LEON R. YANKWICH,
Judge Presiding.

[Endorsed]: Filed Feb. 24, 1961.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

Page:

- 1 Names and Addresses of Attorneys
- 2 Petition for Statutory Three-Judge Court, for Injunction against the enforcement of State Statutes of the State of California, etc., filed 12/12/60
- 18 Order of Court denying petition, filed 12/12/60 and entered 12/15/60
- 20 (copy) Clerk's notice of entry of order denying request for temporary restraining order, etc., dated 12/15/60
- 21 Notice of Appeal, filed 1/9/61
- 23 Praecipe, filed 1/9/61
- 25 Order extending time for preparing record on appeal, filed 2/24/61

Dated: March 7, 1961.

[Seal]

JOHN A. CHILDRESS,
Clerk.
/s/ By WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 17385. United States Court of Appeals for the Ninth Circuit. Technical Publications Institute, and the owners and operators thereof, and Frank Csaszar, its manager, Appellant vs. Stanley Mosk, Attorney General of the State of California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: March 8, 1961.

Docketed: May 25, 1961.

/s/ FRANK H. SCHMID,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 17385

TECHNICAL PUBLICATIONS, INC.,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFOR-
NIA AND STANLEY MOSK, ATTORNEY
GENERAL,

Appellee.

STATEMENT OF POINTS UPON WHICH THE
APPELLANT INTENDS TO RELY ON AP-
PEAL

Comes now Technical Publications, Inc. and Frank Csaszar, its manager, and designate the points upon which they intend to rely on appeal:

(1) The Court below erred in declining to call a three-judge court session to determine the constitutionality of the Education Code of the State of California, and particularly the constitutionality of Sections 29001 to 29022, inclusive, of the Education Code of the State of California.

(2) The District Court erred in declining to hear and determine and to call a three-judge court to hear and determine the constitutionality inherently and as construed and applied in this case of Section 11183 of the Government Code of the State of California in relation to and in connection with Sections 29001 to

29022 of the Education Code of the State of California.

(3) Sections 29001 to 29022 of the Education Code of the State of California, inherently and as construed and applied in this case, violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(4) The Education Code of the State of California, Sections 29001 to 29022, inherently and as construed and applied in this case, violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

(5) The District Court erred in declining to enjoin the enforcement of Sections 29001 to 29022 of the Education Code of the State of California, as it applies to these appellants on the grounds that these sections violate the Twelfth and Fourteenth Amendments to the Constitution of the United States.

(6) The Sections 29001 to 29022 of the Education Code of the State of California, inherently and as construed and applied in this case, violate the First Amendment to the Constitution of the United States.

Appellant intends to urge that the District Court was duty bound to call a 3-judge court and to enjoin the illegal enforcement of the provisions of the Education Code of the State of California, Sections 29001 to 29022, as above set out.

/s/ MORRIS LAVINE,
Attorney for Appellant.

[Endorsed] : Filed August 9, 1961. Frank H. Schmid,
Clerk.

